

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 80 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE N.J.PANDYA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the judgement?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?

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VIJAY KUMAR MITTAL

Versus

STATE OF GUJARAT

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Appearance:

MR AD SHAH for Petitioner

MR SA PANDYA, ADDL.PUBLIC PROSECUTOR for Respondent No.1

MR S.C.PATEL for Respondent No. 2

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CORAM : MR.JUSTICE N.J.PANDYA

Date of decision: 18/07/97

ORAL JUDGEMENT

The petitioner is shown as accused no.2 of charge sheet that came to be filed on 3.3.1989, arising out of a complaint registered as No.19/87, on or about 7.5.1987 with the Ahmedabad office of CBI, which resulted into Special Case No.10 of 1989.

It is an admitted position that, on and after 7.9.1986, the present petitioner joined on the post of General Manager of a Limited Company, known as Mahalaxmi Textile Mills Ltd., having its works at Bhavnagar. The said Limited Company ceased to exist so far as the Mill Unit is concerned, because, it was taken over by the National Textile Corporation and as such, on and after it being thus taken over, it became a unit of National Textile Corporation. That is the reason why offences punishable under Sections 5(1)(d) read with Section 5(2) of the then Prevention of Corruption Act, 1947 along with other offences under IPC were alleged.

The factual background leading to the said charge is with regard to placing order for supply of Lignite from open mines at Panondra in District Bhuj to the aforesaid Mill works at Bhavnagar by motor transport. It is an admitted position that, at about the time when the offence is said to have been committed, arrangement for the supply was entered into with M/s.J.V. & Sons, a transporter and supply Company in preference to other transporters though, on or about 4.12.1985, the tenders of M/s.Darshan Traders having been found, the last contract was awarded to them. It was subsequently cancelled by the then incharge General Manager Shri D.P.Bhatt and M/s.J.V.& Sons came to be awarded the contract thereafter. This happened on or about 19.1.1986. Admittedly, therefore, as on that date, the present petitioner was not working with the said unit.

Not only the said M/s.J.V. & Sons was supposed to supply the goods at the rate of Rs.173/- per MT as ordered, but later on, by oral arrangement, Shri Bhatt and other accused, according to the prosecution case, increased the said rate to Rs.195/- per MT and pursuant thereto, in fact, M/s. J.V. & Sons was reimbursed by preparing necessary vouchers, receiving invoices etc., and withdrawing the money on that basis.

On and after taking over by the petitioner, the first occasion for him to deal with this question arose on or about 3.10.1986, at Annexure.C, page 4, a Minutes drawn up of the Committee meeting dealing with transportation and supply of Lignite. The said Committee consists of Senior Clerk of the office, Manager (Admn.)-cum-CA, Asstt.Chief A/cs.Officer as also the General Manager, i.e. the present petitioner, as on that date.

As one goes through the said Minutes, it is Shri

S.H.Pancholi, Sr.Clerk in the Administration, one of the members of the Committee, who had informed the General Manager, i.e. the present petitioner that, the oral arrangement was to work out by the then General Manager, i.e. the predecessor in office of the petitioner verbally and on telephone as to the increase in the charges from Rs.173/- to Rs.193 plus Rs.2/- by way of commission, per MT. After noting this fact in this Minutes of 3.10.1986, it has been further noted that the present delivery order is expiring as on 17/18.10.1986 and there is hardly any time to call for fresh tenders, due to (i) shortage of time, (ii) increase in demand of lignite from GMDC due to winter season, and (iii) daily requirement of Lignite due to poor quality of coal, it was decided to place an order for 200 MT Lignite with M/s. J.V. & Sons. While doing this, it was decided in that very meeting that, follow-up procedure for tender shall be initiated and for that purpose, the transportation rates etc., shall be ascertained for future contract. The allegation, no doubt, is that the minutes itself is manipulated. However, what is written in the minute is borne out by the subsequent events, as presently shall be seen. By this development, I mean, entering into a fresh contract with another contractor at a reduced rate. If at all the minutes were to be manipulated, he would not allow the original minutes to remain as it is.

In this background, if one turns to the chargesheet, it can be found at page 14 which as summarised is quoted hereunder:

"Investigation further revealed that the said

Shri V.K.Mittal (A2) took over charge of the said Mills as General Manager from the said Shri D.P.Bhatt (A1) on 7.9.86 and he came to know regarding the irregularities of payment of freight charges @ Rs.195/- per MT being paid to M/s. J.V. & Sons, Ahmedabad by his predecessor Shri D.P.Bhatt (A1) and the said S/Shri L.C.Mehta (A3), D.S.Desai (A4) and S.H.Pancholi (A5) though the rate was Rs.173/- per MT. Instead of recovering the excess amount paid to the party M/s.J.V. & Sons by the aforesaid officials, the said Shri V.K.Mittal (A2) also dishonestly and fraudulently prepared minutes on 3.10.86 and dishonestly and fraudulently allowed to continue the work of transportation of lignite by M/s.J.V.& Sons, also allowed the rate of transportation to be reimbursed at the rate of Rs.195/- per MT and decided to place further

order with M/s.J.V. & Sons for transportation of 200 MT of lignite on the same enhanced rate Rs.195/- per MT knowing fully well that the order placed by him for transportation of lignite was at the rate of Rs.173/- per MT but he dishonestly and fraudulently paid @ Rs.195/- per MT (the freight charges) to M/s.J.V. & Sons and thereby caused financial loss to the Corporation and corresponding pecuniary benefit for themselves and others."

No doubt, as rightly submitted by ld.Advocate Shri S.C.Patel appearing for the prosecution, there is a charge of conspiracy and that has been summarised in the last, but one para on page 14 as under:

"Investigation further revealed that the said Shri D.P.Bhatt (A1) in conspiracy with the said S/Shri L.C.Mehta (A3), D.S.Desai (A4), S.H.Pancholi (A5), Pankaj Shah (A6) partner of M/s. J.V. & Sons, M/s. J.V. & Sons (A7), V.K.Mittal (A2), fraudulently and dishonestly paid higher rate of freight charges and thereby caused a huge financial loss to the tune of Rs.1,61,177.07 ps. to the Corporation and corresponding wrongful gain to M/s.J.V. & Sons, Ahmedabad."

If, as alleged in the aforesaid penultimate paragraph of charge appearing on page 14, there is conspiracy alleged against the present petitioner also, it will have to be, by very nature, split into two parts and it cannot be treated as one offence in relation to the entire grand total. It comprises the total amount said to have been taken out of the funds of National Textile Corporation right upto the time that this fraud was discovered and investigation was initiated. Splitting up is required because, on and upto 7.9.1986, the present petitioner was nowhere in the picture. The case of the prosecution is that, the petitioner also entered into the said conspiracy along with other accused and also with M/s.J.V. & Sons, who is also an accused.

If the petitioner is to be made liable for what has been transpired before he took over as General Manager, then there has to be very strong material in this regard. Unfortunately, nothing is to be found in that connection. After his taking over as General Manager, no doubt, as noted in the very Minutes at page 4, he did place order with the said supplier, but he was forced to continue what his predecessor had done

reasons noted through it, and having come to know about it, he straightway proceeded to initiate tender process so that the fresh agreement on appropriate terms can be finalised with that very supplier or any other supplier.

This is not merely a matter of conjecture and inference. In fact, the petitioner did pursue the matter and finally, settled the contract firstly, with M/s.Bhavnagar Coke and Coal Merchants Syndicates, at the rate of Rs.180/ and thereafter with M/s.Raka Enterprise, at Rs.177/- and again fresh tender in the month of March 1987 at the rate of Rs.172/- was finalised with the very party. Thus, from the month of October 1986 to March 1987, not only three Contractors were changed due to the efforts of the present petitioner, but the rate was also effectively brought down substantially and compared to earlier rate in the month of March 1987, it was brought down by Re.1/- as what was agreed to by M/s.J.V. & Sons in writing, which was altered earlier by the predecessor in the office of the petitioner.

Looking to these developments which are very much on record as part of the investigation, it is difficult to agree that any role whatsoever was played by the petitioner, much less, any indication of his being one of the conspirators.

As expected, ld. Advocate Shri S.C.Patel cited a decision of the Supreme Court in the case of STATE OF BIHAR v. RAMESH SINGH, AIR 1977 S.C. 2018, where a note of caution has been sounded by the Honourable Apex Court that, while dealing with an application for discharge, the Courts should not consider the matter from the point of view of evidence as if trial is in progress and, if at the initial stage, there is a strong suspicion which leads the Court to think that there is ground for presuming that the accused has committed an offence, then the Court must reject the prayer for discharge.

This is in keeping with the statutory requirement. A charge is to be framed when the material produced before the Court would lead the Court to presume that, prima facie, offence is disclosed and this should result into framing of charge.

However, charge cannot be seen in isolation of the material that has been collected which will include statements of witnesses, documents collected, as also the reports from experts obtained and other relevant material. While reading the same, the Court cannot avoid evaluating the same and if while evaluating in accordance

with the provisions of the Evidence Act which will be done in course of the trial and to come to a conclusion to lead to the aforesaid presumption, if it is found that there is no material, obviously, no charge could be framed. Thus, evaluation is not ruled out.

This is precisely what is said in the case of NIRANJAN SINGH KARAM SINGH PUNJABI, ADVOCATE v. JITENDRA BHIMRAJ BIJJA AND ORS., AIR 1990 S.C. 1962 in paragraphs 6 and 7 of the judgment. The Court, thus, categorically held that, evaluation is permitted and it has to be done only to find out whether the facts emerging therefrom disclose of ingredients of alleged offence. While limiting the evaluation to the aforesaid extent, if the Court finds out that, the ingredients are made out, the charge shall follow. It is obvious that contrary will be the position if no ingredients are found.

In my opinion, for the reasons stated above, in the instant case, contrary is the situation and, therefore, charge cannot be framed. The petition is, therefore, allowed. The order passed by the ld. Special Judge, on 15.1.1991 is set aside and the proceedings of Special Case No.10 of 1989 in respect of the petitioner accused no.2 is quashed. Rule is made absolute accordingly.

It is clarified that the proceedings, if stayed, pursuant to the interim relief during the pendency of the petition, which was not having the effect of not continuing with the matter in relation to the other accused, shall proceed further against all accused except the present petitioner-accused no.2.

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